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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

SST, INC.,

Plaintiff and Appellant,

v.

TRACY HANDY,

Defendant and Respondent.

B172747

(Los Angeles County
Super. Ct. No. KC039674)

APPEAL from a judgment of the Superior Court of Los Angeles County, Conrad R. Aragon, Judge. Affirmed.

Polk, Scheer & Prober and James V. Mellein for Plaintiff and Appellant.

No appearance for Defendant and Respondent.

RIVT was the assignee of a lender which had entered into an automobile lease agreement with Tracy Handy. In August 2002, RIVT sued Handy, seeking possession of the leased automobile and monetary damages. Handy did not answer and her default was entered on January 6, 2003. On August 8, 2003, the trial court dismissed the action with prejudice. SST, the successor in interest to RIVT, (hereinafter referred to as appellant) appeals the order of dismissal to the extent that it was with prejudice.

The reporter's transcript reflects that this case was called for a hearing on an order to show cause (OSC) re dismissal on June 27, 2003. According to the reporter's transcript, this was at least the second hearing, and the court had ordered appellant's attorney to prepare some analysis on May 28th. It also appears that the court issued numerous orders to show cause re dismissal, but there was no response from appellant. The case summary provided in the Clerk's Transcript indicates that a hearing on an OSC re dismissal was set for January 2003, and continued five times, during the months of January through June 2003. Although we were not provided with the minute orders or reporter's transcripts from these hearings, it appears that the court gave appellant until August 8, 2003, to show cause why the matter should not be dismissed. When appellant, represented by the same counsel who had filed the complaint, appeared again on August 8th, apparently nothing further had occurred in the case. Appellant's attorney conceded that the case should be dismissed without prejudice, but the court insisted on dismissing with prejudice, over appellant's objection.

On appeal, appellant contends that the case should not have been dismissed with prejudice since it never received specific notice that the court would take this action. The court's minutes do not indicate the legal authority under which the action was dismissed; however it appears that because Handy was served and her default had been entered six months before the hearing, the court

was relying on California Rules of Court, rule 201.7 (h), which provides: “When a default is entered, the party who requested the entry of default must obtain a default judgment against the defaulting party within 45 days after entry of default, unless the court has granted an extension of time. Failure to obtain entry of judgment against a defaulting party or to request an extension of time to apply for a default judgment may result in an Order to Show Cause being issued as to why sanctions shall not be imposed.”

Here, the court had already issued more than one OSC and appellant did not comply. The court acted well within its discretion in dismissing the case. Government Code section 68608, subdivision (b), dealing with the Trial Court Delay Reduction Act, provides that: “Judges shall have all the powers to impose sanctions authorized by law, including the power to dismiss actions or strike pleadings, if it appears that less severe sanctions would not be effective after taking into account the effect of previous sanctions or previous lack of compliance in the case.” Code of Civil Procedure section 575.2 provides: “Local rules promulgated [by the Judicial Council] may provide that if any counsel, a party represented by counsel, or a party if in pro se, fails to comply with any of the requirements thereof, the court . . . on its own motion may. . . dismiss the action or proceeding or any part thereof. . . . No penalty may be imposed under this section without prior notice to, and an opportunity to be heard by, the party against whom the penalty is sought to be imposed. [¶] (b) It is the intent of the Legislature that if a failure to comply with these rules is the responsibility of counsel and not of the party, any penalty shall be imposed on counsel and shall not adversely affect the party’s cause of action or defense thereto.”

It also appears that the delay was not merely the fault of counsel, since counsel stated at the hearing, “What the latest unanticipated event that occurred is that the actual loan was assigned to a different servicer since the last time I was in

front of the court. And I remember the last time I was in front of the court that the court -- you did tell me rather strictly that there would be no more continuances. [¶] And so I spoke with my client, the new servicer, several times in that period of time. They have been unable to complete the declaration up to this point. And they are not even certain. For instance, if I told them the court would be so gracious just to give us another 2 weeks if they could complete the declaration in that period of time. So I informed them that it was probable that he would dismiss the case without prejudice, and we would refile. [¶] . . . But I can't even at this time promise you that if you give us 2 weeks or even a month that we are going to have the declaration completed."

We conclude that the trial court acted properly in dismissing the matter with prejudice. The judgment is affirmed.

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HASTINGS, J.

We concur:

EPSTEIN, Acting P.J.

CURRY, J.

